



Healthy Rivers
PLAN FOR CHANGE

Wai Ora
HE RAUTAKI WHAKAPAIPAI

Introduction to planning requirements for developing Waikato Regional Plan Change 1 - Waikato and Waipa River Catchments

Collaborative Stakeholder Group Healthy Rivers: Wai Ora Project

June 2014

Policy work stream report for discussion at CSG workshop 4

Disclaimer

This report has been prepared by Waikato Regional Council policy advisors for the use of Collaborative Stakeholder Group Healthy Rivers: Wai Ora Project as a reference document and as such does not constitute Council's policy.

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1 Purpose

To assist the Collaborative Stakeholder Group (CSG) understand planning requirements for their eventual recommendation to the Healthy Rivers Committee iwi and council decision-makers.

Topics covered include:

- a) Introduction to the policy design process.
- b) Guidance from the National Policy Statement for Freshwater Management (NPS-FM) 2011.
- c) River legislation requirements relevant to making changes to Resource Management Act 1991 (RMA) plans.
- d) Minimum requirement of items to be included in an RMA plan and a list of other items the CSG may decide to include.

2 Background

For a general overview of the project legislative context see “Legislative drivers and the legislative context of the Healthy Rivers/Wai Ora project” WRC document number 2372369.

A summary of freshwater values generated by CSG members, and community values received and discussed in a research report, was approved by the CSG in workshop 3.

3 Policy design process

In making a recommendation on the content of Waikato Regional Plan Change 1 – Waikato and Waipa Catchments (Plan Change 1), the CSG will choose the package of policy instruments to achieve short and long term outcomes for water bodies within the catchment.

The CSG is working within a legislative context. In particular, it must:

- Design the plan change within the requirements of the Resource Management Act, National Policy Statement Freshwater Management and the three River Acts¹. This is summarised in Sections 4 and 5 of this report.
- Decide whether it will recommend the minimum items of Regional Plans should be included, or whether it is helpful to also include other items to support the plan change, such as non regulatory methods and explanations. This is summarised in Section 6 of this report.

3.1 Policy design process and link with technical information

The Healthy Rivers Project process has been simplified into four major phases: understand the issue from all sides; develop limits and targets; develop the options and policy mix; and finalise the policy toolkit.

These phases, plus feedback loops, generally describe a typical policy cycle, such as that shown in the diagram attached to the NPS-FM amendment. Following the project phases listed above, policy design for the CSG includes:

¹ Under recent legislation Waikato Regional Council shares management responsibility with the Waikato and Waipa river iwi (Waikato-Tainui, Te Arawa River Iwi, Raukawa, Ngāti Tūwharetoa and Ngāti Maniapoto). Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010; Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Ngā Wai o Maniapoto (Waipa River) Act 2012.

1. Understanding the issue from all sides. The CSG has started by confirming the group's purpose and role, then moved onto river and broader catchment values held, and overall problem statement.
2. The next set of tasks is to use water body values to decide on the overall objectives for the plan change. To do this, the group has sought information about what is important to the different people and living things in the catchment (values) and will then direct technical experts to model a number of possible future scenarios. The preferred scenario will help provide some of the inputs into the development of objectives and setting water body limits (or targets, if the water quality will need improving over time).
3. Once policy objectives are drafted, the next set of tasks is to choose between primary policy instruments to achieve the objectives². A policy instrument aims to change the behaviour of people. The primary policy instrument chosen:
 - Could promote voluntary change, such as the one:one extension service provided within the Upper Waikato Sustainable Milk Plan Project, or it
 - Could create compulsory change in behaviour, such as rules for stormwater discharges or the cap and trade regulation in Lake Taupo catchment.

A primary policy instrument is almost always supported by other policy instruments to assist implementation. For instance, the cap and trade instrument in Lake Taupo catchment is supported by extension services and financial assistance to help farmers make the transition to farming within limits, and to ensure the rate of change is as fast as the community expects.
4. The final phase involves writing the RMA plan change and supporting section 32³ document and adjusting and confirming the detail with final decision-makers before it can be publically notified for submissions.

Appendix 3 is a reproduction of the policy cycle diagram attached to the NPS-FM amendment. While the focus of the diagram is on technical input into setting limits and targets, it contains the key aspects of the policy design for the CSG described above.

4 National Policy Statement Freshwater Management

To implement the National Policy Statement Freshwater Management (NPS-FM) (2011a), all existing regional plans containing freshwater provisions must be assessed, to:

- a) Determine whether they establish freshwater objectives, set limits for all freshwater bodies, and
- b) Establish methods to avoid over-allocation within the objective framework of the NPS-FM, with particular reference to Objectives A1 and A2 (MfE NPS-FM Implementation Guideline document page 18).

Limits and targets are terms used in Policy A2⁴ of the NPS-FM. These are not usually found in first generation regional plans and are not listed as matters to be included in regional plans in section 67 of the RMA.

² Inevitably, there will be lots of back and forth as policy instruments are considered. In particular, the preferred objective may, in part, depend on what it costs to achieve it, which, in turn, depends on the policy instrument/s. The CSG can't finish with phase 2 until it's done (at least some of) phase 3.

³ The Section 32 analysis must examine, amongst other things, whether the provisions, including methods, are the most appropriate way to achieve the objectives - 32(1)(b).

⁴ Policy A2 - Where water bodies do not meet the freshwater objectives made pursuant to Policy A1, every regional council is to specify targets and implement methods (either or both regulatory and non-regulatory) to assist the improvement of water quality in the water bodies, to meet those targets, and within a defined timeframe (MfE 2011).

MfE defines these as:

“In relation to over-allocation, a target is “a limit which must be met at a defined time in the future”. This is relevant in setting water quality targets for addressing over-allocation of the waterbody’s assimilative capacity. Management of both point source and diffuse discharges may be required through targets to claw back over-allocation over time.” (MfE NPS-FW Implementation Guideline document page 18).

The addition of limits and targets does not impose any additional requirements on Regional Councils for provisions to be included in a regional plan.

Identifying freshwater values is the first step to setting objectives and limits. The National Policy Statement for Freshwater Management (2011a) contains objectives for water quality. These are reproduced in Appendix 1.

The Ministry for the Environment has produced a guideline document for the National Policy Statement for Freshwater Management (NPS-FM) that notes “There is no discretion as to whether or not to give effect to the NPS-FM; however, there is discretion⁵ in how it is given effect to” (MfE NPS-FM Implementation Guideline document page 6). It goes on to state:

“The setting of freshwater objectives (being the intended environmental outcomes or environmental state objectives) is a necessary first step in setting limits... Community values associated with each waterbody as determined through engagement with the community will be important factors in objective setting.

A single, comprehensive objective could be set for the waterbody, encompassing a range of key parameters to address both quality (Policy A1) and quantity (Policy B1). Alternatively, there could be multiple objectives, each covering a narrower scope. In either case, it is obviously important that conflicting objectives are avoided.

Regional freshwater objectives need to describe an intended environmental outcome or identify the environmental state required to enable regional values and priorities to be met, rather than just state what those values and priorities are.” (emphasis added).

(MfE 2011b)

5 Vision and Strategy for Waikato River

The Vision and Strategy for Waikato River: Te Ture Whaimana o Te Awa o Waikato is contained in three pieces of river iwi legislation⁶. It applies to the Waikato River and activities within its catchment affecting the Waikato River.

The Vision and Strategy is deemed part of the Proposed Waikato Regional Policy Statement. The Waikato Regional Plan needs to give effect to the regional policy statement and the Vision and Strategy.

The River Acts⁷ include the following vision statement:

⁵ There are a variety of opinions about how the national Policy Statement for Freshwater Management should be interpreted when reviewing Regional Plans. As further background reading, Appendix 2 reproduces text from a recent post on the Land, Air Water Aotearoa (LAWA) website. The post was a short discussion piece authored by staff in several research agencies as a commentary on fresh water values and limit setting.

⁶ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010; Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Ngā Wai o Maniapoto (Waipa River) Act 2012.

⁷ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010; Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010.

“Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.”

In order to realise this vision 13 objectives are included, along with 12 strategies. These cover environmental, cultural, social, economic and spiritual aims.

One of the key drivers for the Healthy Rivers: Wai Ora project is to contribute to giving effect to the Vision and Strategy.

6 Required and optional aspects of an RMA plan

Local authorities have a wide scope to decide what items they will place in their regional or district plans.

A useful source of Resource Management Act (RMA) planning information is the Quality Planning website. This was launched in 2001 to ‘promote good practice by sharing knowledge about all aspects of practice under the RMA’, and is a partnership between the New Zealand Planning Institute, the Resource Management Law Association, Local Government New Zealand, the New Zealand Institute of Surveyors and the Ministry for the Environment.

Much of the information in Section 6 of this report has been sourced from the Quality Planning website.⁸

6.1 Required aspects

Sections 67 of the RMA requires regional plans to contain the following items:

- Objectives
- Policies to implement the objectives
- Rules (if any) to implement the policies.

A focus on these three items aims to make plans shorter, less complex, and easier to read. It also reflects the reality that most users, including the Environment Court, often refer to little more than the objectives, policies and rules of a plan when making decisions on resource consents.

Waikato River legislation states that the Council and each River iwi must jointly decide on the general form and content of the RMA document. To do this, it is likely they will receive a draft Plan Change to consider.

Healthy Rivers project staff have assumed that the CSG will direct staff to write the Plan Change document and associated section 32 analysis. While much of the effort of the CSG will be focused on content, it will also need to make some decisions on the general form of the Plan Change. The CSG will need to decide if it is going to include only the RMA required items in the Plan Change, or whether it would be beneficial to add other items described in Section 6.2 of this report. CSG decisions on the form of the document can wait until after the Plan Change objectives have been drafted.

⁸ See website for RMA Quality Planning resource. www.qualityplanning.co.nz Downloaded 15 May 2014.

6.2 Optional plan aspects and benefits of inclusion

Incorporation of issues, methods, explanations, reasons and environmental results expected is at the discretion of each local authority.

If issues are to be contained in plans they have the benefit of providing:

1. A means to enable clear linkages to matters contained in other strategic or higher-level documents (Long Term Plans, growth strategies, and regional policy statements) that do not sit within the regional or district plan
2. The context to the plan provisions that followed
3. A logical starting point or heading around which related objectives and policies could be grouped.

There are benefits in adding non regulatory methods to a plan. While making plans longer, their inclusion may make other ways of meeting objectives and policies of the plan more obvious. However, according to the quality planning website⁹, a number of local authority practitioners have found that many methods (other than rules) in their plans were referred to infrequently while other methods were not used at all (apparently due to lack of support, the cost to implement them, or time constraints).

Methods could be contained in documents other than the plan itself, and simply referred to by way of an explanatory note (underneath the relevant policy, for example). Reference documents that could then contain the methods (other than rules) may include:

- a) Section 32 evaluation reports (which must examine whether the provisions, including methods, are the most appropriate way to achieve the objectives - 32(1)(b))
- b) External 'guides to the plan'
- c) Codes of practice
- d) Long Term Plans
- e) Annual Plans
- f) Waikato Regional Council catchment plans such as the Waipa and Upper Waikato Catchment Plans that are due to be drafted by July 2014. These Catchment Plans will not contain rules.

6.3 Existing Regional Plan structure

The Waikato Regional Plan and the Waikato Regional Coastal Plan both contain a comprehensive set of RMA plan provisions, including issues, methods, explanations, reasons and environmental results expected, as well as objectives, policies and methods.

The Waikato Regional Plan contains modules related to each natural resource (for instance air, water, discharges to land), and chapters within each module.

Variations or changes to the Plan have been inserted as new chapters as they have been made operative. For instance, Variation 5 - Lake Taupo Catchment is concerned with discharges to water, and has been inserted as Chapter 10 of Module 3 – Water.

6.4 Plan Change 1 and regional plan format

Plan reviews for the parts of the Waikato Regional Plan not in scope for Healthy Rivers Project, and the whole of the Waikato Regional Plan and Waikato Regional Coastal Plan will commence at the end of 2014. No council decisions have been made on a new plan structure resulting from this overall review. Plan Change 1 is expected to be notified several years before the overall review is publically notified. However, staff assumptions being put up for discussion by the council as it prepares its Long Term Plan for 2015 -2025 are that:

⁹ See website for RMA Quality Planning resource. www.qualityplanning.co.nz Downloaded 15 May 2014.

- Waikato Regional Plan and the Waikato Coastal Plan will be contained in one document
- The overall structure will remain
- The Coastal Marine Area part of the plan will be contained in a separate module.
- To make the plan shorter, less complex, and easier to read, not all of the optional RMA provisions will be included.

Current thinking by staff is that one or more new chapters in the Water Module will be added, specifically for land within the Waikato and Waipa River catchments.

The change to the plan format will require a standalone chapter. As noted in Section 6.1 of this Report, the minimum aspects to include are objectives, policies and rules for the Waikato River/Waipā River catchments.

The CSG may also wish to recommend that the Plan Change include non regulatory methods, explanatory material such as introductory background information or explanations. New maps for catchment and sub catchment boundaries to illustrate where limits and targets apply may be helpful.

In addition, in order to comply with the National Policy Statement Freshwater Management (NPS-FM), the change will require:

- a) Inclusion of limits and targets for nutrients (nitrogen and phosphorus) bacteria and sediment.
- b) Consequential changes to many parts of the plan.

6.5 Consequential changes

When only part of an RMA plan is reviewed, new provisions are added for some RMA topics or geographic areas. The new provisions sometimes impact on other parts of the plan, and minor changes to wording are needed to ensure the overall plan still works. Publically notified RMA plan changes or variations contain a list of consequential changes to those parts of the plan that remain substantially intact.

In the Plan Change 1 case, it is too soon to say what these consequential changes will be. For example, if amendments to sediment standards in the Waikato Regional Plan sections 3.2.4.6 and 4.2.11 are made, then consequential amendments to conditions regarding discharge of sediment in rules Chapters 3.5 (stormwater rules, drainage water discharges) and 3.6 (drainage) will be needed.

6.6 Plan Change 1 possible outline

Section 6.1 of this report noted that objectives, policies to implement the objectives and rules (if any) to implement the policies, are the only items that a Regional Plan is required to contain.

The following text is for discussion purposes and includes RMA plan items that are required, as well as some items that are optional to include.

Objectives are written as outcome states required to enable regional values and priorities to be met.

General objectives could include:

- Which water body values are important to people and where.
- Co-management outcomes e.g. how different agencies have agreed to work together/implement the Vision and Strategy for the Waikato River.
- Social, economic outcomes
- Environmental outcomes:

- which contaminants need to be managed and for what broadly defined outcome
- specific narrative end states for ecological health and recreation, fisheries and mahinga kai.

Specific objectives could:

- Refer to each river reach or contaminant. Written as specific, measurable, achievable and time bound. For instance, Waikato Regional Plan Objective 1 in Section 3.10.2 has a table with numerical water quality states, and an end date for when that is measured.
- Broadly define the policy instrument and include tables with more specific end states.

Policies are written as the course of action to achieve objectives.

General policies could:

- Set out the overall policy approach i.e. a glance at the policies should give the reader the outline of how the RMA part of the V&S is going to be achieved, rather than having to go to explanatory text/background sections
- If N and P property limits are defined, policies set out what and how initial allocation is calculated
- How resulting fairness and equity issues will be dealt with i.e. as part of consent or via cost-sharing
- Link between rules and receiving water body limits
 - Waikato Regional Plan says resource consenting 'has regard to' the water standards - see 3.2.4.1 a) and b)

Specific policies could:

- If different river reaches/lakes/streams have different numerical and narrative limits, then these could be listed in the policy (or referred to in a policy but put in a detailed table).

Methods are written to identify who will do what and by when.

Methods can be non regulatory or rules.

7 Summary

In making a recommendation on the content of Waikato Regional Plan Change 1 – Waikato and Waipa Catchments (Plan Change 1), the CSG will choose the package of policy instruments to achieve short and long term outcomes for water bodies within the catchment.

Waikato River legislation states that the Council and each River iwi must jointly decide on the general form and content of the RMA document.

Healthy Rivers project staff have assumed that the CSG will direct staff to write the Plan Change document and associated section 32 analysis. While much of the effort of the CSG will be focused on content, the group will also need to make some decisions on the general form of the Plan Change. Council and iwi decision-makers have the final say on the general form and content of the Plan Change.

There is some national and legislative context in deciding the form and content of a publically notified Regional Plan. The National Policy Statement for Freshwater Management 2011 requires Councils for both water quality and water quantity, to set objectives, limits or targets and methods to achieve these.

Sections 67 of the RMA requires regional plans to contain objectives; policies to implement the objectives; and rules (if any) to implement the policies. Under the RMA, a rule is simply a

regulatory method. A focus on these three items aims to make plans shorter, less complex, and easier to read. The drawback is that the absence of other items such as non regulatory methods, might serve to make the plan very narrow in focus. If objectives are met, partially or wholly, by methods outside the plan, readers will not get a good understanding of how the whole policy package works by reading the plan change.

The policy design process the CSG is following, is generally described in the four phases of the Healthy Rivers Stakeholder Engagement Strategy, and in the diagram attached to the NPS-FW amendment document.

As of CSG workshop 4, the CSG is at the phase of using technical advice to investigate and then choose between a range of outcomes or policy objectives.

Once policy objectives are drafted, the next set of tasks for the CSG is to choose between primary policy instruments to achieve the objectives. A policy instrument aims to change the behaviour of people.

Appendix 3 is based on the policy cycle diagram attached to the NPS-FM amendment, and includes key aspects of the policy design for the CSG described above.

References

Ministry for the Environment 2011a. National Policy Statement for Freshwater Management 2011. Wellington: Ministry for the Environment.

Ministry for the Environment 2011b. National Policy Statement for Freshwater Management 2011: Implementation Guide. Wellington: Ministry for the Environment.

Ministry for the Environment 2011c proposed amendments to the NPS-FM 2011: A discussion document. Wellington New Zealand

Nga Wai o Maniapoto (Waipa River) Act 2012

Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010

Proposed Waikato Regional Policy Statement 2012

Resource Management Act 1991

RMA Quality Planning resource www.qualityplanning.org.nz

Waikato Regional Plan

Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

Commented [r1]: not sure how reference this one

Appendix 1 Excerpts from the National Policy Statement for Freshwater Management 2011

Below are the objectives from the NPS-FM from sections A: water quality, C: integrated management, and D: tangata whenua roles and interests.

A. Water quality

Objective A1

To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2

The overall quality of fresh water within a region is maintained or improved while:

- a) protecting the quality of outstanding freshwater bodies
- b) protecting the significant values of wetlands and
- c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

C. Integrated management

Objective C1

To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.

D. Tangata whenua roles and interests

Objective D1

To provide for the involvement of iwi and hapu, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.

(Ministry for the Environment, 2011a pg 6 and 10)

Appendix 2 Research agency commentary on fresh water values and limit setting

The short discussion piece below, is taken from a recent post on the Land, Air Water Aotearoa (LAWA) website.

Land, Air, Water Aotearoa (LAWA) website states that it has been established with a view to helping local communities find the balance between using natural resources and maintaining their quality and availability. Initially a collaboration between New Zealand's 16 regional and unitary councils, LAWA is now a partnership between the councils, Cawthron Institute, Ministry for the Environment and Massey University and has been supported by the Tindall Foundation.

“The value and values of water Waiology May 19¹⁰”

By Suzie Greenhalgh, Jim Sinner and Natasha Berkett

The Land and Water Forum, the National Policy Statement for Freshwater Management and government proposals for further freshwater reforms all recognise the increasing competition between values for and uses of our freshwater resources in New Zealand. This competition has opened a new lexicon around what we mean by value and values and how these concepts are used in freshwater planning.

There is a voluminous international literature on environmental values, and if anything is clear it is that this term is used in many different ways. In some contexts, values are ethical principles and guides to decision-making, such as kaitiakitanga, equity and efficiency. In other contexts, value refers to how well something contributes to a particular objective, e.g. swimming value means how good a river is for swimming. Value can also mean how much something is worth in monetary terms, e.g. 50 cubic metres per second in a given river can generate power worth \$X million per year.

In still other settings, value is a way of knowing or orienting oneself to the world, e.g. tūrangawaewae represents the place where one feels empowered and connected to one's ancestors.

In discussions about freshwater management in New Zealand, values can mean any and all of these things, and can be summed up in the somewhat circular definition as 'things that have value or meaning', e.g., swimming, native fish, irrigation, mauri.

Values underpin management objectives for planning and policy, such as maintaining the ability to swim in a specific swimming hole, improving eel populations, providing for the irrigation of agricultural land or reducing nitrates in drinking water.

While there is no master list of values, the National Policy Statement for Freshwater Management and some of the emerging government documents like the National Objectives Framework identify some values to be considered in setting limits. These include electricity generation, stock watering, food production and harvesting, natural character, swimming, drinking and ceremonial uses. Each of these values, along with most other values present in

¹⁰ Greenhalgh S, Sinner J and Berkett N 2014. The value and values of water. Waiology. Retrieved on 22/05/2014 from <http://sciblogs.co.nz/waiology/2014/05/19/the-value-and-values-of-water/#comments>

a given water body, will be affected by both the quality and quantity of freshwater in that water body.

The Land and Water Forum recommended that, subject to some bottom lines, councils and their communities use collaborative processes to find an appropriate balance between competing values, and the Government has proposed to amend the Resource Management Act to provide for this. In collaborative processes, participants should determine the indicators they will use to assess the acceptability of policy options, based on their values. It may not be necessary to rank or prioritise these values explicitly. The collaborative group identifies policies that could provide for these values and assesses the consequences, and seeks a mix of policies and intended outcomes that everyone can accept.

In a traditional process, this overall balancing of values is done by elected councillors or, ultimately, hearing commissioners and the Environment Court, which may also have a role in confirming or amending judgements reached through collaboration.

In summary, the various meanings of value should be recognised and respected within decision-making processes. While there is no definitive set of values, and values and their importance will vary with the context and characteristics of a river, stream or wetland, values are crucial to enable councils and communities to identify what they are managing freshwater for.

Suzie Greenhalgh is an economist at Landcare Research. Jim Sinner is a senior scientist at Cawthron Institute. Natasha Berkett is the Policy and Planning Manager at Cawthron Institute.

Further Reading:

Berkett N, Challenger I, Sinner J, Tadaki M. 2013. Values, collaborative processes and indicators for freshwater planning. Cawthron Institute Report No. 2353 for Auckland Council.

Sinner J, Tadaki M. Understanding Conflict over Freshwater Values in a Regional Plan. Policy brief. Manaaki Whenua Landcare Research.

Tadaki M, Sinner J. In press. Measure, model, optimise: understanding reductionist concepts of value in freshwater governance. Geoforum."

Appendix 3

Figure 1 is a reproduction of the policy cycle diagram attached to the NPS-FM amendment, in order to illustrate key aspects of policy design for the CSG described in Section 3 of this report. Note that the focus of this diagram is on the technical aspects of setting limits and target in water bodies (see 2-5 in the diagram), rather than the process to generate and decide on what people are expected to do differently (the policy instruments to achieve water body outcomes).

